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## 18 § 797

## CRIMES

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## § 797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 738.

**Library references:** War and National Defense 648; C.J.S. War and National Defense § 56.

**Historical and Revision Notes**

**Reviser's Note.** Based on sections 45 and 45b, of Title 50, U.S.C., 1940 ed., War and National Defense (Jan. 12, 1938, c. 2, §§ 1, 3, 52 Stat. 3).

Punishment provision of section 45 of Title 50, U.S.C., 1940 ed., War and National Defense, is repeated. Words "upon conviction" were deleted as surplus-

age since punishment cannot be imposed until a conviction is secured.

Minor changes were made in phraseology. 80th Congress House Report No. 304.

**Canal Zone.** Applicability of section to Canal Zone, see section 14 of this title.

§ 798. Disclosure of Classified Information<sup>1</sup>

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained from the same

Shall be fined ten years, or

(b) As used

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(c) Nothing lawful demand mittee of the States of America. 655, § 24(a) 1 So enacted.

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(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof. Added Oct. 31, 1951, c. 655, § 24(a), 65 Stat. 719.

<sup>1</sup> So enacted. See second section 798 enacted on June 30, 1953, set out below.

Historical Note

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Legislative History: For legislative history and purpose of Act Oct. 31, 1951, see 1951 U.S. Code Cong. and Adm. News, p. 2578.

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## Cross References

Disclosure of classified information by Government officer or employee, see section 783(b), (d) of Title 50, War and National Defense.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Veterans' benefits, forfeiture upon conviction under this section, see section 3503 of Title 38, Veterans' Benefits.

## Notes of Decisions

## Library references

War and National Defense 48.  
C.J.S. War and National Defense § 56.

## 1. Constitutional safeguards

The National Security Act, former section 171 et seq., of Title 5, and the Armed Service Procurement Act, section 2301 et seq., of Title 10, together with this section making it a crime to communicate intelligence information to unauthorized persons and section 783 of Title 50 making it a crime for officer or employee of United States to communicate classified

information to agents of foreign governments or Communist organizations do not authorize Department of Defense to create industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied traditional procedural safeguards of confrontation and cross-examination. *Greene v. McElroy*, App.D.C.1959, 79 S.Ct. 1400, 360 U.S. 474, 3 L.Ed.2d 1377.

§ 798. Temporary extension of section 794<sup>1</sup>

The provisions of section 794 of this title, as amended and extended by section 1(a) (29) of the Emergency Powers Continuation Act (66 Stat. 333), as further amended by Public Law 12, Eighty-third Congress, in addition to coming into full force and effect in time of war shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2912, 3 C.F.R., 1950 Supp., p. 71), or such earlier date as may be prescribed by concurrent resolution of the Congress, and acts which would give rise to legal consequences and penalties under section 794 when performed during a state of war shall give rise to the same legal consequences and penalties when they are performed during the period above provided for. Added June 30, 1953, c. 175, § 4, 67 Stat. 133.

<sup>1</sup> So enacted. See first section 798 enacted on Oct. 31, 1951, set out above.

## Historical Note

References in Text. Section 1(a) (29) of the Emergency Powers Continuation Act (66 Stat. 333) as further amended by Public Law 12, Eighty-third Congress, referred to in the text, was formerly set out as a note under section 791 of this title and was repealed by section 7 of Act June 30, 1953.

Proc. 2912, 3 C.F.R., 1950 Supp., p. 71, referred to in the text, is an erroneous citation. It should refer to Proc. 2914

which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Canal Zone. Applicability of section to Canal Zone, see section 14 of this title.

Legislative History: For legislative history and purpose of Act June 30, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 1779.

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Mandatory punishment provision was  
rephrased in the alternative. 80th Con-  
gress House Report No. 301.

**Indictment for Violating This Section  
and Sections 793, 794; Limitation Period.**  
Act Sept. 23, 1950, c. 1024, § 19, 64 Stat.  
1005, provided that an indictment for any  
violation of this section and sections 793  
and 794 of this title, other than a viola-

tion constituting a capital offense, may  
be found at any time within ten years  
next after such violation shall have been  
committed, but that such section 19 shall  
not authorize prosecution, trial, or pun-  
ishment for any offense "now" barred by  
the provisions of existing law.

**Canal Zone.** Applicability of section to  
Canal Zone, see section 14 of this title.

## Cross References

Federal retirement benefits, forfeiture upon conviction of offenses described under  
this section, see section 2282 of Title 5, Executive Departments and Government Offi-  
cers and Employees.

Harboring and concealing, generally, see section 1071 et seq. of this title.

Jurisdiction of offenses, see section 3241 of this title.

Misprision of felony, see section 4 of this title.

Veterans' benefits, forfeiture upon conviction under this section, see section 3505 of  
Title 38, Veterans' Benefits.

## § 793. Gathering, transmitting, or losing defense information

(a) Whoever, for the purpose of obtaining information respect-  
ing the national defense with intent or reason to believe that the  
information is to be used to the injury of the United States, or to  
the advantage of any foreign nation, goes upon, enters, flies over,  
or otherwise obtains information concerning any vessel, aircraft,  
work of defense, navy yard, naval station, submarine base, fueling  
station, fort, battery, torpedo station, dockyard, canal, railroad,  
arsenal, camp, factory, mine, telegraph, telephone, wireless, or sig-  
nal station, building, office, research laboratory or station or other  
place connected with the national defense owned or constructed,  
or in progress of construction by the United States or under the  
control of the United States, or of any of its officers, departments,  
or agencies, or within the exclusive jurisdiction of the United States,  
or any place in which any vessel, aircraft, arms, munitions, or  
other materials or instruments for use in time of war are being  
made, prepared, repaired, stored, or are the subject of research or  
development, under any contract or agreement with the United  
States, or any department or agency thereof, or with any person on  
behalf of the United States, or otherwise on behalf of the United  
States, or any prohibited place so designated by the President by  
proclamation in time of war or in case of national emergency in  
which anything for the use of the Army, Navy, or Air Force is  
being prepared or constructed or stored, information as to which  
prohibited place the President has determined would be prejudicial  
to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or  
reason to believe, copies, takes, makes, or obtains, or attempts to  
copy, take, make, or obtain, any sketch, photograph, photographic  
negative, blueprint, plan, map, model, instrument, appliance, docu-

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ment, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails

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to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. June 25, 1948, c. 645, 62 Stat. 736; Sept. 23, 1950, c. 1024, Title I, § 18, 64 Stat. 1003.

Historical and Revision Notes

**Reviser's Note.** Based on sections 31 and 36 of Title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, c. 30, Title I, §§ 1, 6, 40 Stat. 217, 219; Mar. 28, 1940, c. 72, § 1, 54 Stat. 79).

Section consolidated sections 31 and 36 of Title 50, U.S.C., 1940 ed., War and National Defense.

Words "departments or agencies" were inserted twice in conformity with definitive section 6 of this title to eliminate any possible ambiguity as to scope of section.

The words "or induces or aids another" were omitted wherever occurring as unnecessary in view of definition of "principal" in section 2 of this title.

Mandatory punishment provision was rephrased in the alternative.

Minor changes were made in phraseology. 80th Congress House Report No. 304.

**1950 Amendment.** Act Sept. 23, 1950, divided section into subdivisions, added laboratories and stations, and places

where material or instruments for use in time of war are the subject of research or development to the list of facilities and places to which subsection (a) applies, made subsection (d) applicable only in cases in which possession, access, or control is lawful, added subsection (e) to take care of cases in which possession, access, or control is unlawful, made subsection (f) applicable to instruments and appliances, as well as to documents, records, etc., and provided by subsection (g) a separate penalty for conspiracy to violate any provisions of this section.

**Indictment for Violating This Section; Limitation Period.** Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

**Canal Zone.** Applicability of section to Canal Zone, see section 14 of this title.

**Legislative History:** For legislative history and purpose of Act Sept. 23, 1950, see 1950 U.S. Code Cong. Service, p. 3386.

Cross References

Activities affecting armed forces—

Generally, see section 2387 of this title.

During war, see section 2388 of this title.

Classified information, disclosure by Government official, or other person, penalty for, see section 793(b), (d) of Title 50, War and National Defense, and section 798 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses, described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Veterans' benefits, forfeiture upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.

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### Note 14

taken while on the reservation which officers testified could be used to the advantage of a foreign nation, case was properly submitted to jury. *Schackow v. Government of Canal Zone, C.C.A. Canal Zone 1939, 108 F.2d 625.*

### 15. New trial

Defendant, convicted of conspiracy to obtain defense information, was not entitled to new trial for assertedly newly discovered evidence that one from whom alleged co-conspirator had testified she had obtained defense information which she had furnished to defendant had denied having seen her and, in interviews with Government representatives, and before grand jury insisted on his innocence where defense had declined to interview alleged co-conspirator-witness before trial, requisite information with respect thereto had timely been turned over to defense counsel and he had agreed to enter jurisdiction only if granted immunity from perjury prosecution. *U. S. v. Soblen, D.C.N.Y. 1961, 203 F.Supp. 542, affirmed 301 F.2d 230, certiorari denied 82 S.Ct. 1585, 370 U.S. 944, 8 L.Ed. 2d 810.*

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Defendant, convicted of conspiracy to obtain defense information, was not entitled to new trial for assertedly newly discovered evidence that various former O.S.S. employees were prepared to testify that individual who allegedly supplied defense information had no access to secrets and that he adhered to anti-Communist political tenets where Government had timely produced F.B.I. reports of interviews with former O.S.S. personnel but there was no request for such reports and defense chose not to locate or call any witnesses who had been connected with O.S.S. *Id.*

Defendant, convicted of conspiracy to obtain defense information, was not entitled to new trial for assertedly newly discovered evidence that his brother who had testified against defendant had assertedly been incompetent as witness by reason of mental condition which Government allegedly failed to disclose, where defendant actually knew of brother's mental condition defendant was experienced psychiatrist and it was decided as matter of defense strategy not to subpoena or request production of medical reports or to put psychiatrist on stand. *Id.*

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## § 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information



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relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy. June 25, 1948, c. 645, 62 Stat. 737; Sept. 3, 1954, c. 1261, Title II, § 201, 68 Stat. 1219.

Historical and Revision Notes

**Reviser's Note.** Based on sections 32 and 34 of Title 50, U.S.C., 1940 ed., War and National Defense (June 15, 1917, c. 30, Title I, §§ 2, 4, 40 Stat. 218, 219).

Section consolidates sections 32 and 34 of Title 50, U.S.C., 1940 ed., War and National Defense.

The words "or induces or aids another" were omitted as unnecessary in view of definition of "principal" in section 2 of this title.

The conspiracy provision of said section 34 was also incorporated in section 2383 of this title.

Minor changes were made in phraseology. 80th Congress House Report No. 304.

**1954 Amendment.** Act Sept. 3, 1954, increased the penalty for peacetime espionage and corrected a deficiency in the sentencing authority by increasing penalty to death or imprisonment for any term of years.

**Temporary Extension of Section.** Temporary extension of section, see section 798 of this title.

Section 7 of Act June 30, 1953, c. 175, 67 Stat. 133, repealed Joint Res. July 3,

1952, c. 570, § 1(a) (20), 66 Stat. 333; Joint Res. Mar. 31, 1953, c. 13, § 1, 67 Stat. 18, which had provided that this section should continue in force until six months after the termination of the national emergency proclaimed by 1950 Proc. No. 2914, which is set out as a note preceding section 1 of Appendix to Title 50, War and National Defense.

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, c. 204, 66 Stat. 54, as amended by Joint Res. May 28, 1952, c. 330, 66 Stat. 96. Intermediate extensions by Joint Res. June 14, 1952, c. 437, 66 Stat. 137, and Joint Res. June 30, 1952, c. 526, 66 Stat. 296, which continued provisions until July 3, 1952, expired by their own terms.

**Indictment for Violating This Section; Limitation Period.** Limitation period in connection with indictments for violating this section, see note under section 792 of this title.

**Canal Zone.** Applicability of section to Canal Zone, see section 14 of this title.

**Legislative History:** For legislative history and purpose of Act Sept. 3, 1954, see 1954 U.S. Code Cong. and Adm. News, p. 7133.

Cross References

Classified information, disclosure by Government official or other person, penalty for, see section 783(b), (d) of Title 50, War and National Defense, and section 798 of this title.

Conspiracy to commit offense generally, see section 371 of this title.

Federal retirement benefits, forfeiture upon conviction of offenses described under this section, see section 2282 of Title 5, Executive Departments and Government Officers and Employees.

Jurisdiction of offenses, see section 3241 of this title.

Letters, writings, etc., in violation of this section as nonmailable, see section 1717 of this title.

Veterans' benefits, forfeiture upon conviction under this section, see section 3505 of Title 38, Veterans' Benefits.